# EXHIBIT 33

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO. MID-L-003809-18AS

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| KAYME A. CLARK and DUSTIN W. CLARK, | ) | 104 HEARING |
| Plaintiffs, | ) | TRANSCRIPT OF PROCEEDINGS |
| v. | ) | (VOLUME II) |
| JOHNSON & JOHNSON, et al., et al., | ) | |
| Defendants. | ) | |

Place: Middlesex County Courthouse
56 Paterson Street
New Brunswick, New Jersey 08903

Date: May 30, 2024
9:01 a.m.

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THE COURT: Good morning, everyone. My name is Judge Ana Viscomi. We are here with regard to the continued 104 hearing of Dr. William Longo in the matter of Kayme Clark and Dustin Clark versus Johnson & Johnson, Docket Number 3809-18.

May I have appearances, please, on behalf of plaintiff.

MR. BRALY: Your Honor, on behalf of the Clark family I'm here, Benjamin Braly.

THE COURT: Thank you.

Further on behalf of the plaintiff?

MR. BRALY: Mr. Bibro is here from the Early firm.

THE COURT: I'm sorry. Could you state your name again, please.

MR. BIBRO: Mark Bibro from the Early firm.

THE COURT: Thank you.

And for the defendants.

MR. GARDE: If Your Honor please, John Garde on behalf of the Johnson & Johnson defendants. With me is Mr. Morton Dubin and Mr. Kevin Hynes of King & Spalding.

MR. DUBIN: Good morning.

THE COURT: So, we left off yesterday

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actually chrysotile, right; you're aware that he has offered that opinion, correct?

A. I would say yes, he has offered that opinion. And he has done the most research on polarized light microscopy dispersion staining, but I don't believe he's done any research on the chrysotile in cosmetic talcs.

Q. Okay. And not only has he said, based on being the most experienced person in research in this type of analysis that what you are calling chrysotile is actually talc, he has said you are not properly following PLM dispersion staining analysis methodology, correct?

A. He has stated that.

Q. And, for example, we had one example of that during your testimony yesterday, for example, you put a table up that was from one of his publications, and we can just call up slide 161 first.

And so, this is a PowerPoint actually from Dr. Su but the table inside this is what you were referring to yesterday when you were talking about what the acceptable ranges of refractive indices are for chrysotile, right?

A. Correct.

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Q. And not only has he -- let's just look at an excerpt from his report here. We could go to slide 160.

And what he says is, "I have created and published procedures for reference tables that help analysts measure RI values of the six regulated asbestos minerals, including chrysotile. MAS relies upon my procedure and tables as part of its PLM analysis of Johnson's Baby Powder. However, Dr. Longo completely misunderstood my reference table and claimed that the RI range of my chrysotile table represents the chrysotile's minimum and maximum RI values. This is not true."

And you're aware he said that, right?

A. I am aware.

Q. So, the author of the method that you claim to be following is saying that you are misinterpreting the method, right?

A. He says we're misinterpreting the method, however, if you look at some of the reference chrysotile ranges, you have ranges of chrysotile that are both in the area that we find and also in the area that is outside what Dr. Su says is appropriate. And if you take those, such as what's found in EPA, what's found in others, and if

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you take those and go on his chart, they do match the appropriate refractive indice. So, my intuition there is he has come up with a range that is not -- covers all chrysotile.

Q. Okay. But no question that you put a slide up there yesterday in your examination from his method, and he has told you you are wrong about what this table means, and you still use it, right?

A. Of course we still use it because the range of what we're finding in something like refractive indices, you know, there's a 1.567 in EPA. According to Dr. Su, that would be out of the range and you can't use his table. That 1.567 matches the refractive indices perfectly.

And there's another one, like we just looked at, is 1.538. According to Dr. Su, that would be out of the range that you would call chrysotile. So, I can't quibble with that's what he says, that's what he thinks his chart is, but it doesn't cover all the chrysotile minerals that are out of the typical range.

Q. And we're going to be talking a little bit more about your failure to verify but -- right -- the whole reason we're even having this conversation, we're looking at is this yellow,

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bright yellow, is this golden yellow, is it purple, the whole reason we're having this conversation at all is because we're talking about PLM dispersion analysis, right, which is based on color, correct?

A. That is correct.

Q. But if you had even once decided to use TEM to verify your findings, you could look at what you're calling chrysotile, you could get direct information about crystal structure and chemistry and know fairly simply is it chrysotile or is it talc, right?

A. Right.

Q. Without talking about colors at all?

A. Right, and we have done that. We have now taken samples that we have said is chrysotile in it with the same ranges we're talking about and the ranges that Dr. Su says is out of his table and have verified that it has chrysotile.

Q. No, what I'm saying is you could look at Johnson & Johnson with a TEM, take your concentration method, if you think concentration -- you could take the concentration, what you got, look at it under a TEM analysis and find what you say is chrysotile. And if you found it with TEM and you had chemistry information and crystal structure

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information, we wouldn't even be having to debate whether you are calling particles the wrong color; we would have hard data, right?

A. Well, we would have hard data but what you're saying is not very fair.

We are analyzing samples and showing chrysotile in it with the same methodology, the same everything we're doing and, actually, one of the Avon samples is a Vermont sample.

So, no, have we gotten to J&J yet? You're going to have to be patient for that. So, I look at it as we have now verified it a number of ways. We have verified it by TEM in Avon samples. We have verified it using the SG-210 as a standard because it has the exact same -- not the exact same but the same range of refractive indices and we're not the only one finding chrysotile by TEM in these cosmetic talcs, as we just saw. So that's also verified.

Q. You say you haven't got into it yet. But we looked and when you -- you started claiming there was chrysotile and Johnson & Johnson finding it back in 2020, right?

A. With PLM, that's correct.

Q. So, at minimum, even if we ignore the

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fact that you began this work overall in 2016, you've had four years, four years to look at Johnson & Johnson talc with a TEM microscope and prove that what you're calling chrysotile is chrysotile with chemistry information and crystal structure information, at least four years, right?

A. It's been four years but that's absolutely unfair. We're a commercial lab. We're not a research institute. Yes, if I -- if I was a research institute or I was a university, I could put a couple Ph.D. students on this where they would be working on it full-time. We don't get funding for that. So, it takes us a long time to go through that. And the CSM method was not in, you know -- it was not in a way from the methodology where we had to work on it. Unlike the amphibole one, where it had been published and there's a method for it, you could go right in and start finding amphiboles. The chrysotile one just had this protocol from Colorado School of Mines where they're finding chrysotile by PLM and did not do TEM on it. But we had to figure out how to make the concentration method the most, you know, efficient of extracting out the talc in the chrysotile. That was not an easy thing.

You know, we may go days because of

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workload that we're not doing any work on it, we're doing the best we can.

Q. Let's break what you just said down into two pieces.

First, you said we're not a research institution, right, we are not a research institution so why should we go and do this additional work?

A. No. No, you mis --

Q. Let me finish my question.

A. Okay. Sorry.

Q. You are currently charging $50,000 retainers every time you are retained in a cosmetic talc case, right?

A. Since May first of this year, that's correct.

Q. And how many cosmetic talc cases would you say that you're currently being retained in?

A. Four or five.

Q. Okay. Over this entire -- let's say this year?

A. Maybe six or seven.

Q. Currently, or how about last year, how many cases?

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A. Last year, I don't know. We didn't start charging this retainer to help us in the research last year.

Q. But you're not making enough money where you could afford to have somebody, instead of doing one PLM analysis, switch them over and look at a TEM analysis to verify; that's what you're saying?

A. No, I'm not saying that. It's -- we have -- we have samples that are due. Now we've hired additional people and since we have now been able to fund this, now we've started looking at it by TEM. Now, the reason we did the TEM the way we did is because another scientist by the name of Mark Bailey took three Avon -- three Avon samples, used a heavy liquid density separation method on it, CSM, but he made some tweaks on it that we're now using, and we wanted to do the first ones to verify what that scientist found. So, now we have verification from two different labs and, yes, we're going to expand in it, and, yes, we've been hiring some people now that we've got the $50,000 retainer. We got two new PLM analysts and we're looking for some additional people to help move this along, but before we got the retainers, we didn't have the money to hire people.

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Q. Let's look at the second thing that you said. You said, well, we were still developing the CSM method. You told Congress back in 2020 that you had already cracked the code on a method to concentrate for chrysotile and find chrysotile, right?
A. That's untrue.
Q. It was untrue that you cracked the code?
A. That I told Congress that. I told Congress that we didn't have a method yet for chrysotile, it was only amphiboles.
Q. We'll look at that. But your CSM method was sufficiently developed back in 2020 that you were using it for PLM, right?
A. Again, you're correct but you're being unfair. We were using it for PLM but we were finding that we were getting less in the concentration method than we were with just looking at it. We were finding that the chrysotile was ending up in the pellet, which makes absolutely no sense. So, we had to solve that riddle.
Q. But if you still had to solve the CSM problem, if the CSM method wasn't reliable enough to use for TEM, then it wouldn't have been reliable

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enough to use for PLM either?
A. That is so wrong. The PLM method was showing it was there. We were getting positive chrysotile but we weren't getting the full amount that should have been in there. That's why we had to go to -- we had to go to using the SG-210, one, to figure out why is it going into pellet. Well, it took time to do that. And you guys know in your office, you know, somebody comes in and says, you know, I need two more, you know, motions to strike and if you don't have enough people, how do you do it?
Q. So, when you were back testifying, when you started testifying about your PLM work using this CSM concentration method, did you tell juries that, "Hey, wait, I'm presenting this about my concentration chrysotile stuff by PLM but you shouldn't be paying attention to this because the method's really not worked out?" Is that what you said about your method when you were testifying about it?
A. Of course not. What I was telling the juries is that we're finding chrysotile, it was positive for chrysotile. It doesn't -- it may not be the right amount but it's absolutely positive for

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chrysotile by PLM. That's what I was telling the jury. I wasn't telling them that we still have things to do on it but before we got the TEM, I wanted it to be the message that we would publish and say this is what you do. We had to solve all these little issues. They weren't little issues, they were -- they were scratch head issues.
Q. Okay.
A. So two different things.
Q. So, let's move back -- I'm sorry. Are you done?
A. No.
Q. Okay.
A. If it is positive by PLM, that means there's chrysotile in it. And what we were -- and getting the exact amounts and getting the most efficient extraction so that we could use it so we knew in TEM that if it's there, we could detect. That was the whole issue.
Q. Let's go back and reorient about what else you've been talking. Let's just go to the orientation slide, slide 1. A lot of people couldn't see slide 1.
So, we sort of talked a little bit about these first two things already but, as I said,

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when we move from TEM which gives you just printouts of data, when we start to change to a PLM dispersion staining analysis, I think you actually said that even people who use PLM to identify minerals in practice usually don't do it this way where you have to depend on color of the particle, the birefringence; you said they usually use Michel-Levy charts, right?
A. Correct.
Q. So, you selected not just a PLM method, you selected one that would depend on whether your analyst in your lab accurately picked the right color for the analysis, right?
A. That's just like every lab.
Q. Okay. And that then, if you're an analyst and, again, that means that an analyst, and let's just -- has the ability, and I know we disagree about whether this happened, but because of the method you chose, the analyst has the ability to change the results by picking a different color than is observed under the microscope, right?
A. Any PLM analyst who wants to change the colors could do that. We don't do that. And we verified that by looking at chrysotile that was in the same size range and gave the same, same ranges

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of color. So, we validated what we were looking at and, you know, I'm not -- and I'm not blind from the, you know, the criticism of everything here because it's outside the norm.

Q. Okay. And just again, so we understand what we mean about why color is important, why color is critical to this analysis, let's go back to slide 142.

So, the way this analysis works is you're trying to eventually get to a refractive index number or two numbers actually in parallel and perpendicular. And that's when you're going to do your calculation based on those numbers to see what the birefringence value is, right?

A. Correct.

Q. And what refractive index number you have is driven by what color the analyst says they are seeing, correct?

A. Yes, sir. As we went over this yesterday, I agreed with you.

Q. So, if you see a particle that is actually yellow, it will have a different refractive index number than a particle that is purple, right?

A. That is correct. If it -- if it is that purple.

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Q. And so, for example, we went through these images, slide 51, that we were not able to see yesterday but this particle, as we discussed when I just showed you a plain image of it, you told me it was golden brown, right?

A. That's the main -- that's the main color there.

Q. And yet by reversing the process, because you actually give -- you see in the black box down there, it says "RI 1564," right?

A. I do.

Q. So, we were able to reverse the process to go from that RI to figure out what color your analyst was calling this, what color your analyst said they were seeing, and that is dark purple, right?

A. You do have that in there but as I've talked about yesterday, you don't get these really nice colors. You'll get a mixture of them and it's just over a process. So, that is one sample. But I stick to what it is. That is chrysotile and I rely on the analyst and I don't have a problem with that.

Q. And this particle that you're calling purple chrysotile is essentially the same color as all the talc plates that we see in the upper left of

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the image, right?

A. No. If you look at the ends, you know, one point, and you've got darker material there, I can see -- I'd have to be on the microscope but I can see some purple there. We have a mixture. So that's what they chose. You know, we can argue about this all day long but if you turn it -- you know, that's what we called it and I stick by it.

Q. You stick by it, but slide 143, just to understand how this matters again, the number that goes into that calculation, so, all of the number on the right, and last time I had this text in purple, but, because the number that goes into your birefringence calculation, the number that you're subtracting the number from, that is based on the analyst calling the particle purple; if it was yellow, a different number would be there, right?

A. Okay. Can we go back to the other one?

Q. Sure. 1 -- sorry, 54 -- 51, sorry. 1.564, that corresponds to purple. If it was, for example, a yellow, then you would be in the range -- in the yellow ranges. You'd have numbers like 1.579, 1.583, depending on how bright that is, and we've talking about the brightness for illumination

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ranges.

A. So, that's not yellow at all. I appreciate that's what you see.

Say, we go down to, and we take purple -- you would have something in the range of about 1.576, 1.576 and 1.561 -- that's a 5100. You are still in the range of what is accepted for chrysotile.

Q. Okay.

A. So, if I --

Q. According to you.

A. If I buy your evaluation here and that is not the yellows that you're pointing out there and I put in a .1576, I am still in the range and that is not talc.

Q. Um-hum.

A. What you have in that right-hand corner is talc. See that bright up there? Well, that we're going to be down in the 420 to 410 range. So, it's not talc.

Q. Dr. Longo, so, let's assume -- see these rounded objects. Let's on the right instead. Okay? There's one little rounded blue and there's some rounded objects up there. Those are talc plates, right?

CERTIFICATE OF OFFICER

I CERTIFY that the foregoing is a true and accurate transcript of the testimony and proceedings as reported stenographically by me at the time, place and on the date as hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney or counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

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